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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,408	12/15/2000	Miriam Fields-Babineau	4523-001	7703

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[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3644

DATE MAILED: 02/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/736,408	FIELDS-BABINEAU, MIRIAM
	Examiner	Art Unit
	Kimberly S. Smith	3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12/15/00.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 15 December 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2 &amp; 3</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "60" and "30" have both been used to designate what appears to be the same detail. Each detail should have only one reference number and be referred to as a single consistent descriptive term. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The disclosure is objected to because of the following informalities: Page 5: reference numbers "32" and "34" have been referred to as both a "side member" and "ring". Each reference number should be referred to as a single consistent descriptive term.

Appropriate correction is required.

3. The use of the trademark "K9 Kumalong", "Gentle Leader", "Behave", "snoot Loop" and "Halti" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informalities: page 5, line 10: replace "color" with - -collar- - and page 6, line 19: replace "50" with - -52- -.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 2 and 3** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. **Regarding claim 2**, it is unclear as to whether the nose loop is to be composed of a cotton braid, a nylon braid or a braid made of a combination of both materials.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. **Claims 1 and 5** are rejected under 35 U.S.C. 102(b) as being anticipated by Borchelt et al., US Patent 5,992,352 (Borchelt).

Borchelt discloses a training halter for a dog comprising an upper nose loop (top portion of loop 50) and a lower nose loop connected to the upper nose loop (defined as the bottom portion of loop 50), a collar member (20) and a pair of side members (40 and 30).

Regarding claim 5, Borchelt discloses an under chin strap (60).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 2 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt.

Regarding claims 2 and 4, while Borchelt does not positively disclose that the upper nose loop is made of a soft cotton/nylon braid or that the lower nose loop and side members are made of a flat braid nylon weave, it is disclosed in the Abstract that the various components are preferably formed of a flexible material such as a braided fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the upper nose loop out of a cotton/nylon braid and the lower nose loop and side members made of nylon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

12. **Claims 3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt as applied to claim 2 above, and further in view of “Snoot Loop Halter for Dogs by Peter Borchelt” submitted as applicant’s admitted prior art (Borchelt’).

Borchelt discloses the invention substantially as claimed however it is not disclosed that the upper nose loop is cylindrical. Borchelt’ teaches within the same art on the identical device that “a piece of felt of flannel can be wrapped in one layer around the nose loop and sewn to form a close fitting tube” to allow the nose loop to “slide within the soft cushioned tube,

protecting the skin". It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the upper nose loop be cylindrical as taught by the "close fitting tube" of Borchelt' in order to prevent injury to the nose of the animal.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DuBarry (US Des. 378,150), Smith (GB 2 215 973 A) and McDonald (GB 2 143 111 A) are cited to show the general state of the art of dog halters. Melo (US 3,000,351) is cited to show a cylindrical upper nose loop.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-308-4611. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4196 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

Kimberly S. Smith  
Examiner  
Art Unit 3644

kss  
February 1, 2002

*Charles T. Jordan*  
CHARLES T. JORDAN  
SUPPLYING PATENT EXAMINER  
TECHNOLOGY CENTER 3600